Equality and Human Rights Commission

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Minutes of the 113th meeting of the Board of the EHRC

14 September 2023 (09:30 to 13:00)
9th floor, Windsor House, 50 Victoria Street, London SW1H 0TL

Attending

Commissioners
Kishwer Falkner (Chairwoman), Alasdair Henderson (Joint Deputy Chair), Eryl Besse (Joint Deputy Chair), Jess Butcher, Joanne Cash, David Goodhart, Kunle Olulode, Akua Reindorf, Su-Mei Thompson, Lesley Sawers

Officers
Cath Denholm, Chief Operating Officer (covering for CEO)
Moya Alcock, Director, Communications
James Cupis, Head of Workplace Transformation (item 8)
Naomi Fawcitt, Principal, Head of Private Office
Bill Malloy, Director, Finance, Governance and Planning
Victoria Mearns, Senior Associate, Corporate Governance
Katherine Perks, Director of Policy (item 7)

Guests
Helen Anderson, Government Equality Hub

Observers
Jonathan Parsons, P&WC independent member

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1. Chairwoman's welcome and apologies

1.1 The Chairwoman welcomed attendees to the meeting, extending a special welcome to Jonathan Parsons, independent member of the People and Workspaces Committee (P&WC), who was attending as an observer.

1.2 Apologies for absence were received from the CEO, who is on sick leave. The Chairwoman thanked the Chief Operating Officer (COO) for filling in for the CEO in his absence.

2. Declarations of interest

2.1 The Chairwoman noted that Alasdair Henderson advised Commissioners at the 29 August extraordinary Board meeting that he had been appointed as a director of Faith in Public Ltd since 2020, and that his declaration of interests on the EHRC website has been updated.

2.2 The following interests were declared with regards to the CEO report, and Commissioners advised that they would recuse themselves if there was any discussion on these points:

a) Akua Reindorf declared an interest in the Conservative Party's implementation of the independent recommendations relating to Islamophobia; and
b) Lesley Sawers declared an interest in the Financial Conduct Authority and the closure of the bank accounts of high-profile individuals.

3. Minutes of the 112th Board Meeting

3.1 The Board approved the minutes of the meeting of 21 June as an accurate record.

3.2 The Chairwoman noted that the Board had an extraordinary meeting on 29 August. The Board approved the following record of the meeting:

a) In a private session, the Board discussed the leak inquiry report, commissioned at the 21 June Board meeting. The Board accepted the report's recommendations in full and requested that an action plan be tabled at the next Board meeting on 14 September for further discussion. The Board requested minor amendments to the report, which have been incorporated by the author where appropriate, and the final report was circulated to all Commissioners by Monday 4 September.

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b) In respect of the question about whether to intervene in the court proceedings relating to the UK Government's use of section 35 of the Scotland Act 1998 in relation to the Gender Recognition Reform (Scotland) Bill, the Board decided not to make an application to intervene at this point. The Board decided that, if the UK Government's case goes to an appeal, the Commission will reconsider intervening, with a further Board discussion necessary.
c) Regarding the case of a former EHRC employee likely to bring a case to employment tribunal, the Board asked that the Executive instruct Counsel to conduct a merits assessment and to provide an opinion on potential remedies. The Board decided to establish a sub-committee of Commissioners to review Counsel's opinion and to advise the Chairwoman and the Board on next steps. That sub-committee comprises Commissioners Akua Reindorf, Alasdair Henderson, Kunle Olulode and Su-Mei Thompson.

4. Actions Arising

4.1 The Board noted the action log.

4.2 Commissioners enquired about the delay in delivering anti-bullying and harassment training. The Chairwoman requested a formal note to explain the delays to the Board.

Action: Director of People and Infrastructure to update P&WC on the delays to providing anti-bullying and harassment training at its 19 September meeting; an update to be provided to the whole Board following that discussion and any actions agreed at P&WC.

4.3 The COO advised that a paper on the People Survey 2023/24 is scheduled for the P&WC meeting on 19 September, including considering questions about the Board. The Chairwoman noted that the use of recruitment software, Applied, would also be discussed at that meeting.

4.4 The Chairwoman advised that she is expecting the Worker Protection Bill to become an Act next week, having been through its third reading on 12 September.

4.5 The Chairwoman advised she is content that everything on the action log is in hand and will be covered at this or future meetings and that the actions proposed for completion will be complete by the end of this meeting.

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5. Committee and Commissioner Working Group updates

5.1 The Chair of the Audit and Risk Assurance Committee (ARAC) advised that ARAC met on 11 September. The Committee discussed the leak inquiry report in a private session, noting that their views reflected those of the Board; they discussed the Board Effectiveness Review and conducting an internal mid-point review, which the Board will discuss at its 17 October meeting. ARAC reviewed the quarterly risk report, agreeing the recommendation of an additional risk on internal investigations and how these are managed, which will be proposed for Board decision at the 17 October meeting; they provided advice on developing Key Performance Indicators, which will be discussed at the 23 November Board meeting.

Action: Head of Business Improvement to include in the risk report an additional risk on internal investigations for Board approval at the October Board meeting.

5.2 The Chair of the People and Workspace Committee (P&WC) advised that P&WC had not met since the last Board meeting, and the next meeting would be on 19 September.

5.3 The Chair of the Statutory Report Commissioner Working Group (CWG) advised that the CWG has not met since the last Board meeting. He advised that the Statutory Report is now in the design phase, and that the Communications team has developed communications and stakeholder engagement plans to maximise the impact of the report once published. The Chairwoman confirmed that she wrote to the Minister for Woman and Equalities requesting the report be laid in Parliament in the week of 23 October. She requested that the communications plan be presented at the next Board meeting.

Action: Director of Communications to present the Statutory Report communications plan to the October Board meeting.

5.4 The Chair of the Human Rights Monitoring (HRM) CWG advised that the CWG had not met since the last Board meeting. She noted that the HRM Strategy is being updated in line with comments from the CWG, and it will be reviewed at the next CWG meeting; and the Human Rights Tracker methodology is well underway, with a prototype assessment page and progress statuses to be shared with the CWG in the autumn.

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5.5 The Scotland Commissioner advised that the Scotland Committee met on 7 September. She noted that Tatora Mukushi resigned as Committee Member on 8 August. The Committee noted the Scotland Committee 2022-23 annual assurance report to the Board; advised on the proposed approach to planning for the 2024/25 Business Plan; advised on the development of the 2025-28 Strategic Plan; discussed EHRC's response to the Scottish Government's Human Rights Bill consultation and advised that the EHRC should respond to the consultation on the areas proposed, such as the interaction with the UK equality legislation and frameworks, noting our shared human rights mandate with the Scottish Human Rights Commission.

5.6 The Wales Commissioner advised that the Wales Committee met on 4 September. She advised that the Committee met with the Wales team beforehand to discuss work over the last six months and business planning for the year ahead. At the formal meeting members advised on the proposed approach to planning for the 2024/25 Business Plan; advised on the development of the 2025-28 Strategic Plan; noted the Wales Committee 2022-23 annual assurance report to the Board; and discussed the forthcoming Wales Committee effectiveness review.

6. CEO Report and Chairwoman's update

6.1 The Board noted the CEO report.

6.2 The Board approved in principle continued negotiations with National Lottery Community Fund to secure new Glasgow office accommodation before the end of the calendar year.

6.3 The Board approved the appointment of four new Scotland Committee members for three years from 1 October 2023, with one candidate proposed for reserve should one of the four selected decide not to take up post.

6.4 The Board approved the reappointment of Bethan Thomas to the Wales Committee for three years from 1 October 2023.

6.5 The Chairwoman requested that the Communications team review the protocol on managing potential conflicts of interest between the EHRC and Committee members' and Commissioners' media outputs.

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Action: Director of Communications and Director of Finance, Planning and Governance to review the protocol on managing potential conflicts of interest between the EHRC and Committee members' and Commissioners' media outputs, identifying any additional measures required.

6.6 Regarding the employment tribunal of a former EHRC employee, the Board agreed that we should not seek to settle the case.

6.7 Commissioners enquired about the policy on changing the EHRC logo to reflect specific calendar events. It was agreed that while support of agreed campaigns or days should continue, in future the logo should not be altered as part of that support.

6.8 Commissioners suggested some amendments to the leak inquiry action plan, which were noted for inclusion. The Director of Finance, Planning and Governance asked Commissioners to send any further comments to him after the meeting.

6.9 Commissioners enquired about internal communication channels and requested an overview of internal communications and staff engagement on it.

Action: Director of Communications to provide an overview of all internal communications by correspondence.

6.10 Commissioners advised that schools and parents are urgently requesting trans guidance for schools. The Chairwoman noted that there have been significant delays to the Department for Education (DfE) publishing its guidance. The Director of Communications informed the Board that in the next two weeks EHRC will complete a light touch update of our technical guidance to ensure it is legally correct, and a communications plan is in place to raise awareness of this guidance. Commissioners discussed whether it would be appropriate for EHRC to consider being more actively involved in the DfE guidance, noting that only the equality aspects would be within our remit. The Chairwoman suggested that the Board considers taking a longer-term view on options concerning the guidance.

Action: Director of Legal, Litigation and Enforcement to share EHRC's updated technical guidance for schools with Commissioners Akua Reindorf and Alasdair Henderson to review before it is published on the EHRC website.

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6.11 Commissioners asked for an update on the review to improve our understanding of the impact of our Separate and single-sex service providers guidance. The COO advised that the legal team are providing a further briefing, and Commissioners would be updated via correspondence.

Action: Director of Regulation to provide the Governance Team with an update for Commissioners on the review to improve our understanding of the impact of our Separate and single-sex service providers guidance.

7. Alignment between the Labour Party and EHRC policy positions

7.1 The Board noted the proposed approach to alignment between the Labour Party and EHRC policy positions. The Director of Policy advised Commissioners that a review of EHRC's positions with other political parties will be produced so as to engage with all parties on the findings of our Statutory Report.

7.2 The Director of Policy advised that Baroness Doreen Lawrence will be leading on the Labour Party's Race Equality Act, and that we expect further detail on what the Act will include in due course.

Action: Private Office to organise a meeting between the Chairwoman and Baroness Doreen Lawrence to seek more information on the Race Equality Act.

7.3 The Chairwoman enquired how the Civil Service determines engagement with the main opposition party in the run up to elections so that we can be informed by their approach. The Director of Policy advised that she would look into this, noting that EHRC is looking to establish regular meetings with the Shadow Secretary.

Action: Director of Policy to establish with the Equality Hub how the Civil Service determines engagement with the main opposition in the run up to elections and update the Board.

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8. Locations and estates strategy 2023-28

8.1 The Board approved the general direction of travel laid out in the location and estates strategy, including investing in our Manchester HQ and increasing staff numbers there over time. They advised that further analysis would be required on the remaining proposals on hybrid working, office relocations and maintaining our satellite offices in Cardiff, Glasgow and London. They also proposed more work was required on the location of offices across the UK.

8.2 The Board discussed the EHRC hybrid working model. Comments and observations from Commissioners included:

a) support for designing office spaces that maximise collaboration;
b) to consider potential disadvantages for employees, as an absence of mentoring and networking could hinder future promotions;
c) to consider the logistical management of staff attending the office to achieve the benefits of office working, including scheduling set days for specific teams to attend the office; and
d) the benefits of hybrid or home working for those with disabilities.

8.3 The independent P&WC member advised Commissioners that the option of hybrid working is important for candidate attraction, but in general the trend is for people to come back into the workplace.

8.4 The Board discussed proposals regarding EHRC's satellite offices. Comments and observations from Commissioners included, to consider:

a) moving the London office to a more affordable location given the costs of the current location;
b) improving office attendance figures to justify estates costs; and
c) the pros and cons of supporting cross-nations working through having GB, Scotland and Wales colleagues in satellite offices.

8.5 The Chairwoman requested that P&WC have a further discussion on the estates and locations strategy to advise on the points and queries raised. It was noted that this should include improving office attendance figures, increasing office attendance targets, maintaining the current satellite offices and the legal implications of committing to a five-year hybrid working policy in relation to employment contracts.

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Action: Director of People and Infrastructure to provide P&WC with further analysis at its December meeting on improving office attendance figures, increasing attendance targets, maintaining satellite offices and the legal implications regarding employment contracts and office attendance expectations; and bring updated proposals for estates and locations to a future Board meeting.

9. Board and Committee meeting schedule, April 2024 to June 2025

9.1 Commissioners agreed due to time constraints to postpone this item for decision to the October Board meeting.

Action: Director of Finance, Planning and Governance to present the Board and Committee meeting schedule paper at the October Board meeting.

10. AOB

10.1 The Chairwoman advised that the next Board meeting and away day will be held in person in Manchester on 17 and 18 October, and that the Governance team will be in touch with further details.

10.2 The Board noted the Forward Schedule, the Scotland Committee and Wales Committee annual assurance reports 2022-23, and the draft minutes of recent Committee and CWG meetings.

10.3 With no other business, the Chairwoman closed the meeting.

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